

**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

SCOTT DAVID WEINBERG

**1181 Ygnacio Valley Road
Walnut Creek, CA 94598**

**3012 Lone Tree Way
Antioch, California 94509**

**140 Santa Rita Dr.
Walnut Creek, CA 94596**

Optometrist License No. 08136

Respondent.

Case No. 2009-17

OAH No. 2010080946

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 17, 2011.

It is so ORDERED January 18, 2011.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-17

13 **SCOTT DAVID WEINBERG**

OAH No. 2010080946

14 **1181 Ygnacio Valley Road**
15 **Walnut Creek, CA 94598**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 **3012 Lone Tree Way**
17 **Antioch, California 94509**

18 **140 Santa Rita Dr.**
19 **Walnut Creek, CA 94596**

20 **Optometrist License No. 08136**

21 Respondent.

22 In the interest of a prompt and speedy resolution of this matter, consistent with the public
23 interest and the responsibility of the State Board of Optometry of the Department of Consumer
24 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which
25 will be submitted to the Board for approval and adoption as the final disposition of the
26 Accusation.

27 **PARTIES**

28 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
Optometry. She brought this action solely in her official capacity and is represented in this matter

1 by Edmund G. Brown Jr., Attorney General of the State of California, by Char Sachson, Deputy
2 Attorney General.

3 2. Scott David Weinberg (Respondent) is represented in this proceeding by attorney
4 John D. Forsyth, whose address is 2431 Fillmore Street, San Francisco, CA 94115-1814.2. On or
5 about February 3, 1984, the State Board of Optometry issued Optometrist License No. 08136 to
6 Scott David Weinberg (Respondent). The Optometrist License expired on February 28, 2010,
7 and has not been renewed.

8 JURISDICTION

9 3. Accusation No. 2009-17 was filed before the State Board of Optometry (Board),
10 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
11 and all other statutorily required documents were properly served on Respondent on August 9,
12 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
13 Accusation No. 2009-17 is attached as Exhibit A and incorporated by reference.

14 ADVISEMENT AND WAIVERS

15 4. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 2009-17. Respondent also has carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
18 Order.

19 5. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
21 his own expense; the right to confront and cross-examine the witnesses against him; the right to
22 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
23 the attendance of witnesses and the production of documents; the right to reconsideration and
24 court review of an adverse decision; and all other rights accorded by the California
25 Administrative Procedure Act and other applicable laws.

26 6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
27 every right set forth above.
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1 CULPABILITY

2 7. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 2009-17, agrees that cause exists for discipline and hereby surrenders his Optometrist License
4 No. 08136 for the Board's formal acceptance.

5 8. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Optometrist License without further process.

7 CONTINGENCY

8 9. This stipulation shall be subject to approval by the State Board of Optometry.
9 Respondent understands and agrees that counsel for Complainant and the staff of the State Board
10 of Optometry may communicate directly with the Board regarding this stipulation and surrender,
11 without notice to or participation by Respondent or his counsel. By signing the stipulation,
12 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
13 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
14 stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of
15 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
16 the parties, and the Board shall not be disqualified from further action by having considered this
17 matter.

18 10. The parties understand and agree that facsimile copies of this Stipulated Surrender of
19 License and Order, including facsimile signatures thereto, shall have the same force and effect as
20 the originals.

21 11. This Stipulated Surrender of License and Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
25 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
26 executed by an authorized representative of each of the parties.

27 12. In consideration of the foregoing admissions and stipulations, the parties agree that
28 the Board may, without further notice or formal proceeding, issue and enter the following Order:

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1 have on my Optometrist License. I enter into this Stipulated Surrender of License and Order
2 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
3 State Board of Optometry.

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5 DATED: 11/19/10


SCOTT DAVID WEINBERG
Respondent

7 I have read and fully discussed with Respondent Scott David Weinberg the terms and
8 conditions and other matters contained in this Stipulated Surrender of License and Order. I
9 approve its form and content.

10 DATED: 11/19/10


JOHN D. FORSYTH
Attorney for Respondent

12
13 ENDORSEMENT

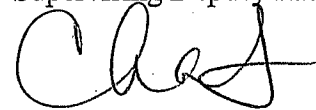
14 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
15 for consideration by the State Board of Optometry of the Department of Consumer Affairs.

16 Dated: ~~October 15, 2010~~

17 Dec 1, 2010

Respectfully submitted,

18 EDMUND G. BROWN JR.
Attorney General of California
19 FRANK H. PACOE
Supervising Deputy Attorney General



21 CHAR SACHSON
Deputy Attorney General
22 *Attorneys for Complainant*

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Exhibit A

Accusation No. 2009-17

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. CC 2009-17

11 **SCOTT DAVID WEINBERG**
12 **1181 Ygnacio Valley Road**
Walnut Creek, CA 94598

ACCUSATION

13 **3012 Lone Tree Way**
14 **Antioch, California 94509**

15 **140 Santa Rita Dr.**
16 **Walnut Creek, CA 94596**

17 **Optometrist License No. 08136**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

23 2. On or about February 3, 1984, the State Board of Optometry issued Optometrist
24 License Number 08136 to Scott David Weinberg (Respondent). The Optometrist License expired
25 on February 28, 2010, and has not been renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the State Board of Optometry (Board), Department
28

1 of Consumer Affairs, under the authority of the following laws. All section references are to the
2 Business and Professions Code unless otherwise indicated.

3 4. Section 3110 of the Code states:

4 "The board may take action against any licensee who is charged with unprofessional
5 conduct, and may deny an application for a license if the applicant has committed unprofessional
6 conduct. . . .

7 . . . "

8 5. California Code of Regulations, title 16, section 1517 states:

9 "For the purpose of denial, suspension, or revocation of the certificate of registration of an
10 optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act
11 shall be considered to be substantially related to the qualifications, functions, and duties of an
12 optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist
13 to perform the functions authorized by his/her certificate of registration in a manner consistent
14 with the public health, safety, or welfare. . . ."

15 6. Section 118, subdivision (b), of the Code provides that the expiration of a license
16 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
17 within which the license may be renewed, restored, reissued or reinstated.

18 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 CAUSE FOR DISCIPLINE

23 (UNPROFESSIONAL CONDUCT)

24 8. Respondent is subject to disciplinary action under section 3110 and California Code
25 of Regulations, title 16, section 1517 in that he acted unprofessionally. The circumstances are as
26 follows:

27 a. On or about September 22, 2009, Respondent set fire to a trash can located at
28 890 Oak Grove Road in Walnut Creek, California.

1 b. On or about September 22, 2009, Respondent set fire to a newspaper recycling
2 bin behind Trader Joe's Market located at 785-A Oak Grove Road, Concord, California.

3 c. On or about September 22, 2009, Respondent set fire to a dumpster at West
4 America Bank located at 1676 N. California Boulevard, Walnut Creek, California.

5 d. On or about September 23, 2009, Respondent attempted to set fire to the
6 Comcast building located at 1270 Arroyo Way, Walnut Creek, California, by stuffing paper into
7 the building's mail slot and igniting the paper. The fire was extinguished by firefighters.

8 e. On or about September 23, 2009, Respondent stole the manager's keys from
9 Wendy's restaurant located at 2955 N. Main Street, Walnut Creek, California. Immediately
10 thereafter, Respondent set fire to the restaurant's trash receptacles and fence.

11 f. On or about September 24, 2009, Respondent set fire to the Comcast building
12 located at 1270 Arroyo Way, Walnut Creek, California. The building burned, causing
13 approximately \$1,000,000.00 in property damage.

14 PRAYER

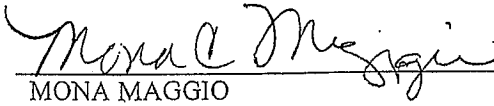
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the State Board of Optometry issue a decision:

17 1. Revoking or suspending Optometrist License Number 08136, issued to Scott David
18 Weinberg;

19 2. Ordering Scott David Weinberg to pay the State Board of Optometry the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3; and

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 8/3/10


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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